

Office of the Secretary, Interior

§ 4.320

detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any Federal court to the Board for further proceedings, the Board will remand the matter to an administrative law judge, an Indian probate judge, or BIA. In the alternative, to the extent the court's directive and time limitations permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries about any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems this action appropriate. If, before a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the OHA Director will determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal will be limited to those issues that were before the administrative law judge or Indian probate judge upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent

authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: 70 FR 11826, Mar. 9, 2005, unless otherwise noted.

§ 4.320 Who may appeal.

(a) *Right of appeal.* An interested party has a right to appeal to the Board from an order of an administrative law judge or Indian probate judge on a petition for rehearing or petition for reopening or regarding tribal purchase of interests in a deceased Indian's trust estate.

(b) *Notice of appeal.* Within 60 days from the date of the decision, an appellant must file a written notice of appeal signed by the appellant, the appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203.

(1) A statement of the errors of fact and law upon which the appeal is based must be included in either the notice of appeal or in any brief filed.

(2) The notice of appeal must include the names and addresses of parties served.

(3) A notice of appeal not timely filed will be dismissed for lack of jurisdiction.

(c) *Service of copies of notice of appeal.* The appellant must personally deliver or mail the original notice of appeal to the Board of Indian Appeals.

(1) A copy must be served upon the administrative law judge or Indian probate judge whose decision is appealed as well as all interested parties.

(2) The notice of appeal filed with the Board must include a certification that service was made as required by this section.

(d) *Action by the administrative law judge or Indian probate judge; record inspection.* The administrative law judge or Indian probate judge, upon receiving a copy of the notice of appeal, must notify the Superintendent concerned to return the duplicate record filed under

§ 4.321

§§ 4.236(b), 4.241(d), or 4.242(f) to the LTRO designated under § 4.236(b). The duplicate record must be conformed to the original by the LTRO and will thereafter be available for inspection either at the LTRO or at the office of the Superintendent. If a transcript of the hearing was not prepared, the administrative law judge or Indian probate judge will have a transcript prepared that must be forwarded to the Board within 30 days from receiving a copy of the notice of appeal.

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal must be forwarded by the LTRO to the Board by certified mail. Any objection to the record as constituted must be filed with the Board within 15 days of receiving the notice of docketing issued under § 4.332.

§ 4.322 Docketing.

The appeal will be docketed by the Board upon receiving the administrative record from the LTRO. All interested parties as shown by the record on appeal must be notified of the docketing. The docketing notice must specify the time within which briefs may be filed and must cite the procedural regulations governing the appeal.

§ 4.323 Disposition of the record.

(a) After the Board makes a decision other than a remand, it must forward to the LTRO designated under § 4.236(b):

(1) The record filed with the Board; and

(2) All documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision.

(b) The LTRO must conform the duplicate record required by § 4.320(d) to the original sent under paragraph (a)(1) of this section and forward the conformed record to the Superintendent concerned.

43 CFR Subtitle A (10-1-08 Edition)

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§ 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

(1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§ 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;